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TENANT LANDLORD RELATIONS

FOREWARD

The University of Santa Clara Law School Chapter of the Northern California Public Interest Research Group (NorCal PIRG) has written this pamphlet and the County of Santa Clara Department of Weights, Measures and Consumer Affairs has published it to inform landlords and tenants of some of their rights and obligations as well as to improve landlord-tenant relations.

This pamphlet is furnished as a matter of service only. Many areas of landlord-tenant relations either have not been included or are only briefly summarized. No guaranty is given - nor should any be inferred - with regard to the completeness, accuracy, or timeliness of any material contained herein.

Users are strongly urged to consult their own legal counsel or to obtain legal aid in the event a question arises as to their legal obligations.

NorCal PIRG and the County of Santa Clara are grateful to the Palo Alto Human Relations Commission whose booklet "Landlord-Tenant" was used as a guide in the preparation of this pamphlet.

GUIDELINES FOR LANDLORDS AND TENANTS

GENERAL: All rules and agreements between the landlord and the tenant should be stated in writing.

DISCRIMINATION: No person may lawfully be denied the right to rent property because of his race, color, creed, religion, or nationality.

DEPOSITS: A security and/or cleaning deposit is normally required by the landlord from the tenant. The tenant should find out what the deposit is to be used for and have it stated in writing. Normally, deposits are applied to unpaid rent, cleaning and necessary repairs other than "normal wear and tear." At the end of the tenancy the landlord may claim only such amounts of deposits as are "reasonably necessary" to apply toward the stated uses of the deposit . The tenant is entitled to a partial or full refund of the deposit, and if it is not returned within two weeks, or if the landlord does not act in good faith, he may be subject to damages of up to $200 in addition to actual damages.

CONDITION OF THE DWELLING UNIT: Normally it is agreed that the tenant will take over the premises in good condition, and in return he will be responsible for any damages except normal wear and tear. It is the tenant's responsibility to present a list of any damages which exist at the time he moves in to the landlord for signature by both parties. This protects both parties from liability from existing damages.

ROOMMATES: Each tenant is individually responsible for the entire rent, unless otherwise stated in the rental agreement.

HOUSE RULES: The tenant should be aware of all house rules (which are usually enforced) before renting. Normally they are included in the rental agreement.

LANDLORD'S RIGHT TO ENTER: The law permits the landlord to enter rented premises at reasonable times for purposes of inspection and repair. Nevertheless a landlord has no right to enter the premises to oust the tenant from possession without giving notice to the tenant and without a valid court order authorizing him to do so. This is the law even if the rental agreement allows the landlord to do so.

LEGAL AGE: Under most circumstances a minor (under the age of 18) can not be held to the terms of a rental agreement or lease.

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INSURANCE: The landlord is under no legal obligation to procure insurance against fire or any other risk for the benefit of the tenant and in practically all cases the landlord does not. The tenant should inquire about this and procure his own insurance.

ALTERATIONS: Most rental agreements contain a clause against making alterations without the landlord's consent. Minor alterations generally will not violate this clause, but all alterations which cannot be removed become the property of the landlord.

MAINTENANCE AND REPAIRS

The landlord is required to keep the building in a condition fit for human occupation. The landlord is required to maintain:

1. Plumbing facilities.
2. A supply of hot and cold running water.
3. Heating facilities.
4. Electric lighting.
5. Floors, stairs, and railings.

The above must meet standards set by local housing laws.

6. Effective waterproofing and weather protection (roof, doors, windows, walls, etc.).
7. The building and grounds must be kept clean, and sanitary with no filth, trash, rats, or harmful insects.
8. The landlord must provide receptacles for garbage and rubbish. He must keep them clean and in good repair.

If it states in the lease or rental agreement that the landlord is not required to repair these items, that part of the lease or rental agreement is against the law. The landlord is still required to fix these items if they need repair. It is legal for the tenant to agree to make these repairs himself in return for lower rent. The law may let the tenant out of such an agreement, however, if

1. The landlord refused to rent to the tenant unless he made the agreement. Or
2. If the landlord does not enforce the agreement.

The landlord will not be required to perform the maintenance mentioned above if the tenant does not perform any of the following duties:

1. Keep the apartment clean and sanitary.
2. Dispose of garbage and trash.
3. Properly use all appliances and plumbing.
4. Not permit anyone to purposely damage or remove any part of the apartment.
5. Use the various rooms only for their proper purposes.

The tenant should immediately notify the landlord in writing if repairs are needed in one of the areas described. If the landlord does not make the repairs within a reasonable time after notice, the tenant can do one of two things:

1. He can move out without paying any more rent.
2. He can make the repairs himself and subtract the cost from his next month's rent. The tenant is not allowed to spend more than one month's rent, and he can do this only once in any 12 month period.

How long is a "reasonable time?" A tenant should give the landlord 30 days to make the repairs before he acts. But if the situation is dangerous or an emergency, the tenant may act as quickly as necessary.

RETALIATION BY THE LANDLORD

If the tenant has exercised his rights (such as repairs at the expense of the landlord or has complained to an appropriate governmental agency as to the habitability of a dwelling) and if the tenant is Not in default in the payment of his rent, the landlord may not initiate any action or proceeding to recover the possession of the

premises, cause the tenant to quit involuntarily, increase the rent or decrease any services to the tenant within 60 days of the tenant's action (repairs or complaint) if his main purpose is retaliation against the tenant for exercising his rights.

Furthermore, the landlord may not intentionally interrupt or interfere with any utility service (such as gas or electricity) furnished to the tenant if the landlord's intent in such an action is to terminate the occupancy. If he does so, the tenant is entitled to a civil action for damages. Also, the landlord would be subject to $100 per day penalty for each day that utility service to the tenant is interfered with. The tenant should see an attorney in the case of interference with his utility service, for the law also entitles him to reasonable attorney's fees paid for by the landlord if the landlord is found to be in the wrong.

EVICTION

A. The landlord's right to evict a tenant may arise for the following reasons:
   1. for using the premises for an unlawful purpose;
   2. for maintaining, committing, or permitting the maintenance or commission of a nuisance upon the premises;
   3. for any violation of the rental agreement or lease, for example:
      a. Failure to pay rent,
      b. Staying after giving notice of intention to vacate,
      c. Causing damage to the property,
      d. Not delivering possession of the premises after proper notice has been given.
   4. However, if the landlord accepts rent with knowledge of a breach of some term of the agreement, it may constitute a waiver by the landlord.

B. Requirements for Giving Notice to Evict
   1. If the tenancy is from month-to-month, the landlord may give the tenant 30 days notice within which the tenant must either correct the wrong or vacate. The landlord also has the right to give the tenant a 3 day notice.
   2. If the tenancy is covered under a lease agreement, the landlord may give the tenant 3 days notice in which to correct the wrong or vacate. But the landlord may only give notice when the tenant has failed to live up to one or more terms of the lease, when a lease is involved.
   3. The notice must be in writing and served on the tenant (and any subtenant involved). The notice must state the following things:
      a. What violation the landlord is claiming.
      b. If back rent is claimed, the exact amount supposed to be due; and
      c. The tenant has 3 days in which to correct the problem if it is correctable or leave.
         1) The 3 day period commences on the day following the service of the notice.
         2) If the third day falls on a Saturday, Sunday, or on a legal holidy, the act must be done on the next business day.

C. Eviction Proceedings: If the tenant neither corrects the problem nor vacates within 3 days, the landlord may then begin eviction proceedings.
   1. Compliance after the 3 day period is not valid.
   2. Exception: If, in the notice, the landlord did not declare that the tenancy would be forfeited if the tenant did not correct the wrong within the 3 days, then the court may withhold execution of judgment for 5 days. During this time the tenant may pay into court the amount owing under the judgment and be restored to the premises for the remaining time of his lease.
   3. After the notice period is ended, the tenant will be served with a summons and complaint, usually personally or by mail. The complaint will already have been filed in court and probably will ask for immediate possession of the premises, rent to and including the time of trial, damages amounting to three (3) times the money claimed, and costs and attorney's fees.
   4. The tenant has five (5) calendar days to file his response with the court.

a. The tenant may retain an attorney to represent him or he may obtain a form answer available from the court.

5. If the tenant does not file his pleading within five (5) days, the landlord may enter his default, and the court probably render a judgment against the tenant, granting the landlord the things he has requested.
6. If the tenant files an answer, he will receive notification from the court of the date and time for the hearing, where the judge will decide who is right.
   a. Many landlords require a tenant to sign a clause stating that the tenant will pay for the landlord's attorney's fees, but this clause is invalid if the landlord loses in court.
7. If the tenant loses, he will be served with a writ of restitution. He must vacate the premises within five days. Any possessions remaining on the premises after the 5 days period may be removed and stored by the landlord for 30 days. The tenant may recover his possessions by payment of the reasonable storage costs only. He is not required to pay the judgment against him before recovery of his possessions which are in storage, such a requirement has been ruled unconstitutional. If the tenant does not redeem his possessions within 30 days, the landlord may sell the goods at a public sale. He may keep the proceeds of such public sale up to the amount of the court judgment. Any excess must be returned to the tenant.

RENTAL AGREEMENTS

In "renting" property it is both customary and desirable that a written record be made of the agreement. The written agreement, which exists for the purpose of protecting the rights and defining the obligations of both landlord and tenant, may be either a Lease or a Rental Agreement.

California Law is that in the absence of a lease, a tenant will be deemed to have rented the premises for separate periods of time, one following the other. This period is usually month to month.

Unless otherwise agreed rent is paid at the end of each rental period, as long as the rental period does not exceed one year. Most rental agreements provide that rent shall be paid in advance, at the beginning of each monthly period.

A Rental Agreement should also make provisions regarding the manner and method by which either party may alter or rescind the agreement, e.g. moving out or raising rent.

Since this is an agreement implying mutual assent, usually a move by either party to change or end the agreement can not be made without giving adequate notice of such an intention.

NOTICES....

In order for a notice to be effective, it will probably have to meet the following requirements:

1. It should be in writing. Sender should keep a dated copy.
2. SERVICE: A copy should be given to the tenant or landlord (or the Apartment Manager) PERSONALLY; or a copy can be left with a person of suitable age and discretion AND the mailing of a certified copy to the tenant or landlord.
3. TIME PERIOD: The notice must state a specific period of time before taking effect. In a month to month agreement the usual period is thirty days, however landlord and tenant may agree to any reasonable notice period as long as it is not less than seven days.

LEASES

A valid lease usually must contain at least the following information.

a. The names of both the landlord and tenant;

b. A clear description of the premises;
c. The specific period of the lease, including the beginning and end;
d. A provision for the transfer and use of the premises to the tenant;
e. The signature of both the landlord and tenant.

A lease is normally composed of a series of covenants, or agreements. These agreements are usually binding and should be carefully examined before the lease is signed. A tenant should not hesitate to question or object to a particular covenant, or attempt to negotiate the covenant with the landlord before signing the rental agreement.

A tenant who has abided by the terms of a lease, who has not created or maintained a nuisance, and has not used the premises for any unlawful purpose probably cannot be evicted legally during the term of the lease (see eviction).

Under a lease a landlord has an obligation to maintain the premises in a habitable condition (see maintenance and repair). "Habitable" may include adequate weatherproofing, hot and cold running water, toilet facilities, electric lighting, heating, garbage collection, and proper lighting and maintenance of common access ways. If a landlord fails to fulfill these obligations it may be indicated that the lease has been breached.

RECENT COURT DECISIONS, WARRANTY OF HABITABILITY

Two recent court decisions have led to a substantial change in California Landlord-Tenant law. The first of these decisions concerns the responsibility of the landlord to maintain the leased premises in a "habitable" condition; the second decision concerns the landlord's liability for injuries resulting to tenants on the leased premises.

In Green v. Superior Court, the California Supreme Court decided on January 15, 1974 that in each residential lease there is an implied warranty of habitability on the part of the landlord. What this means is that when an individual enters into a lease the landlord promises as part of his duties under the lease to keep the leased premises in a "habitable" condition, regardless of whether or not he expressly states this to the tenant.

The court further explained that the implied warranty of habitability does not require that a landlord maintain the leased premises in a perfect condition or in a condition particularly pleasing to the tastes of the tenant, but that it did mean that bare living requirements must be maintained. In most cases substantial compliance with building and housing code standards materially affecting health and safety of the tenant would be adequate to meet the landlord's obligations.

The court also held that a breach of this warranty could be raised as a defense by the tenant in an unlawful detainer action. What this means is that the tenant's duty to pay rent is mutually dependent on the landlord's fulfillment of his implied warranty of habitability and that if the landlord brings a legal action against the tenant for nonpayment of rent (see Eviction above), the tenant may in his defense argue that the premises are not in an "habitable" condition.

This decision means that there has been a substantial change in Landlord-Tenant law since formerly the landlord was under no obligation to ensure that leased premises were "habitable" and the only defense that a tenant could use in a legal action for non-payment of rent was the "repair and deduct" remedy discussed in Eviction above.

LANDLORD LIABILITY ON DANGEROUS CONDITIONS

In the second important decision, Brennan v. Cockrell Investments, the California Court of Appeals held that the landlord could be held responsible for injuries to tenants caused by dangerous conditions in the leased dwelling.

The old rule imposed no duty on the landlord to make the dwelling safe for occupancy. Now, if there is a defective condition and it causes injury to the tenant, the landlord may be held responsible. The tenant is cautioned however on relying on this recent decision since it could yet be reversed or modified on rehearing or on a hearing by the Supreme Court.

Both decisions above are a substantial change in California law in favor of the tenant, but as was indicated in the introduction to this pamphlet the tenant is advised to consult with a lawyer or a legal service to discover if the decisions discussed above apply to the tenant's particular grievance.

MEDIATION--SMALL CLAIMS COURT

Often, a tenant finds that his landlord will not keep the premises in a livable condition or will not return a deposit which he feels entitled to. Landlord also have problems with tenants who will not pay the rent or keep the premises in good condition. If requests and discussions do not end in an agreement, the tenant or landlord might take the problem to a local Human Relations Commission or a Landlord-Tenant Committee for a satisfactory settlement of the dispute. Arbitration, using a third party to help settle the problem, and Small Claims Court are good alternatives, especially if mediation bodies aren't available.

SMALL CLAIMS COURT

The rules pertaining to a Small Claims Court generally are as follows:

1. The court is not authorized to give anything but money and the maximum amount which it can award is $500.00.
2. The court may hear a case concerning tenants who remain on the premises after not paying rent where the term of the tenancy is not greater than month to month and where the amount claimed is less than $500.00. If any other type of action is requested, the suit must be brought in a higher court.
3. Only the court located in the district either where the problem arose or in which the defendant lives can be used.
4. Neither plaintiff nor defendant is allowed to have an attorney at the trial, but they may consult one before the trial.

The Small Claims Court procedure is quite simple, and the cost is nominal, usually under $5.00 for filing fees and service of the complaint. Instructions on the proper procedure and the forms required usually can be obtained from the court clerk.

IMPORTANT ADDRESSES AND TELEPHONE NUMBERS

Small Claims and Municipal Courts

1. For Sunnyvale, Cupertino: 605 West El Camino Real, Sunnyvale . . . .
2. For Santa Clara: 1675 Lincoln, Santa Clara . . . . . .
3. For San Jose, Milpitas: 200 West Hedding, San Jose . . . . . .
4. For Los Gatos, Campbell, Saratoga: 14205 Capri Drive, Los Gatos. . .

Legal Aid

1. Lawyer's Reference Service: Santa Clara County Bar Association . . .
   Sunnyvale Bar Association. . . . . .
   Palo Alto Bar Association. . . . . .
2. Legal Aid (low income), Santa Clara County, 235 East Santa Clara
   235 East Santa Clara, San Jose. . . . . .
   405 Sherman Avenue, Palo Alto . . . . . .
   University of Santa Clara Law Clinic. . . .
3. Governmental Agencies, County of Santa Clara
   Dept of Wts, Meas & Cons Aff, 1555 Berger Dr, Bldg 2, Rm 208, San Jose
   San Jose Tenant-Landlord Hearing Com., 151 W. Mission, Rm 108, San Jose
   Palo Alto Human Rel. Com., 250 Hamilton Ave., 7th Floor, Palo Alto. .
4. American Civil Liberties Union, P. O. Box 1407, San Jose. . . . . .

Community Groups:

1. San Jose Community Tenants Union, 255 E. Williams, San Jose
2. Palo Alto Tenants Union. . . . . .
3. Lawyer's Guild, 255 East Williams, San Jose. . . . . .
4. Community Legal Services/Legal Aid Society of Santa Clara County, 330 North Market, Santa Clara . . . . . .